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State of Hawaii
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Forestry and Wildlife
Honolulu, Hawaii 96813

Chairperson and Members
Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

Land Board Members:

**SUBJECT: MEMORANDUM OF UNDERSTANDING BETWEEN THE
DIVISION OF FORESTRY AND WILDLIFE AND THE
UNITED STATES DEPARTMENT OF THE INTERIOR,
NATIONAL PARK SERVICE AND MUTUAL AID
FIREFIGHTING AGREEMENT BETWEEN THE DIVISION
OF FORESTRY AND WILDLIFE AND THE UNITED
STATES ARMY GARRISON, HAWAII**

Attached is a Memorandum of Understanding (MOU) between the Division of Forestry and Wildlife and the U.S. Dept. of Interior, National Park Service and a Mutual Aid Firefighting Agreement between the Division of Forestry and Wildlife and the U.S. Army Garrison, Hawaii.

The agreements provide the following:

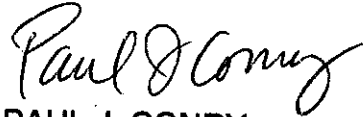
1. MOU with the USDI, National Park Service
 - a) provides the caveat that either the National Park Service or DOFAW can request assistance from the other.
 - b) Limits the assistance to which is within the current capability of the respective agencies as determined by the responsible agency.
2. MOU with the U.S. Army Garrison, Hawaii
 - a) provides the caveat that either the U.S. Army Garrison, Hawaii or DOFAW can request assistance from the other.
 - b) Limits the assistance to which is within the current capability of the respective agencies as determined by the responsible agency.

The attorneys from the U.S. Government and the State Attorney General's office have reviewed its respective agreement.

RECOMMENDATION:

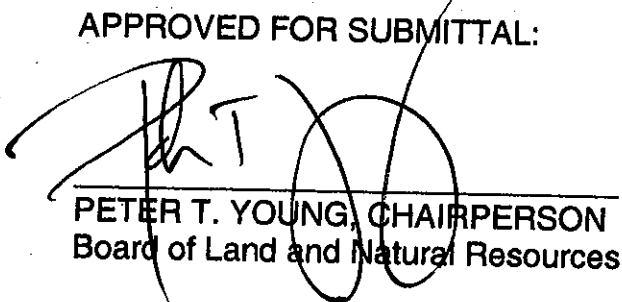
That the Board approves the Mutual Aid Agreement and Memorandum of Understanding with the respective agencies and authorizes the Chairperson to sign the attached documents.

Respectfully submitted,



PAUL J. CONRY
Administrator

APPROVED FOR SUBMITTAL:


PETER T. YOUNG, CHAIRPERSON
Board of Land and Natural Resources

Attachments:

- Exhibit 1 (Memorandum of Understanding – NPS)
- Exhibit 2 (Mutual Aid Agreement – USAGH)

Agreement Number _____

**MEMORANDUM OF UNDERSTANDING
FIREFIGHTING ASSISTANCE**

**Between
The United States Department of the Interior
National Park Service
And
Hawaii Department of Land and Natural Resources
Division of Forestry and Wildlife**

THIS AGREEMENT, entered into this ____ day of _____, 2007, by and between the NATIONAL PARK SERVICE, an agency of the United States, hereinafter referred to as "NPS," by its Pacific Area Director, and the STATE OF HAWAII, hereinafter referred to as "State," by its Board of Land and Natural Resources,

WITNESSETH THAT:

WHEREAS, NPS has fire management responsibilities within the units of National Park in the State of Hawaii and under the authority of *42 U.S.C. Sec. 1856a (1994)* and the *Department Manual DM 245.1.1* has the authority to enter into mutual aid agreements with other agencies for fire management; and

WHEREAS, under Chapter 185 of the Hawaii Revised Statutes, as amended, the Division of Forestry and Wildlife, Department of Land and Natural Resources, State of Hawaii, hereinafter referred to as "DOFAW", has the responsibility to take measures for the prevention, control and extinguishment of wildland fires within forest reserves, public hunting areas, wildlife and plant sanctuaries, and natural area reserves and shall cooperate with established fire control agencies of the counties and the federal government in developing plans and programs and mutual aid agreements for assistance for the prevention, control, and extinguishment of fires on forest, grass, brush, and watershed lands not within the department's fire protection responsibilities; and

WHEREAS, both NPS and DOFAW have the personnel, equipment, and skills suited for the task of dealing with fire hazard operations in the State of Hawaii; and

WHEREAS, by pooling the resources of NPS and DOFAW, the combined strength and efforts of these two agencies would afford the people of the State of Hawaii more extensive and effective protection of their lives, property and natural resources;

NOW, THEREFORE, in the interests of public safety, health, and welfare, NPS and DOFAW do hereby mutually agree as follows:

(1) When used in this Agreement:

"Agency" means either NPS of the United States or DOFAW of the Department of Land and Natural Resources, State of Hawaii.

ARTICLE I – BACKGROUND AND OBJECTIVES

The objective of this Agreement is to establish the terms and conditions under which the agencies will provide mutual assistance in preventing, detecting, and suppressing wildfires and provide support in the suppression of structural fires.

Currently both agencies are responsible for providing fire protection and other fire management activities for their respective jurisdictions. By pooling the resources of both agencies, the combined strength and efforts of these agencies would afford the people of the County of Hawaii more extensive and effective protection of their lives, property and natural resources. It is therefore mutually advantageous for the agencies to coordinate their efforts in the prevention, detection, and suppression of wildfires in and adjacent to their areas of responsibility.

ARTICLE II - AUTHORITY

This Agreement is entered into under the authority of *42 U.S.C. § 1856a (1994)* and *HRS 171-6*.

ARTICLE III – STATEMENT OF WORK

A. All agencies understand and agree:

(1) To furnish, when requested, qualified employees to assist in the suppression of wildfires whenever the furnishing of such assistance does not seriously impact the primary responsibilities of the assisting agency. Employees will be deemed to be acting within the scope of their respective agency's employment when responding to calls from the requesting agency. This reciprocal protection will be provided at no cost for the first 24 hours. Any assistance beyond the first 24 hours shall be negotiated on an incident-by- incident basis.

(2) To assist each other upon request, consistent with conditions at the time of the request, in the suppression of fire in areas which are normally the concern of the other agency.

(3) To respond in the suppression of the fire, insofar as prerequisites of service will permit, and collaborate with the requesting agency for the purpose of direction and coordination of the efforts of the requesting agency. Such collaboration shall occur using a unified command structure under the incident command system.

(4) It is understood that the assisting agency may be unable to respond in instances when the personnel and/or equipment available to it are, or would thereby be rendered, insufficient to meet the actual or realistically potential needs of the requesting agency.

(5) That each agency waives all claims against the other for compensation for any loss, damage, personal injury or death occurring as a consequence of the performance of this Agreement.

(6) To provide to the requesting agency an annual familiarization tour of the facilities, equipment, and access points.

(7) To cooperate in the development and delivery of interagency training programs. Both agencies will cooperate to make maximum use of existing personnel, equipment and facilities for training purposes.

(8) To share components of their communications systems such as: radio frequencies, dispatching systems, and communication sites. Agencies shall provide each other with a list of frequencies upon request.

B. The agencies further agree as follows:

(1) Each agency will provide to the other agency a list of points of contact with telephone numbers, to be contacted in case of an emergency. At least once a year, or more often if necessary, each agency will provide the other agency with an updated list of such persons and telephone numbers.

(2) Each agency will provide to the other agency copies of current fire management plans for their areas of primary responsibility, including maps of areas involved and descriptions of special or extraordinary actions to be taken.

(3) Only Minimum Impact Suppression Tactics will be used when fighting fires within Hawaii Volcanoes National Park. No ground-disturbing equipment such as

graders or bulldozers will be used on NPS lands without the permission of the NPS Superintendent or his/her designee.

- (4) After notifying the other agency of a fire's discovery, either agency may take immediate action to suppress a fire in the other agency's area of primary responsibility in order to save life or property.
- (5) Nothing in this Agreement will be construed as obligating the NPS to expend in any one fiscal year any sum in excess of the monies appropriated by Congress and allocated by the NPS for the performance of this Agreement.

ARTICLE IV – TERMS OF AGREEMENT

This Agreement will be effective for a period of five years from the date of final signature, unless it is terminated earlier by one of the parties pursuant to Article IX that follows.

ARTICLE V – KEY OFFICIALS

All communications and notices regarding this Agreement will be directed to the following key official(s) for each party:

A. For the NPS:

Pacific Area Director
300 Ala Moana Blvd.
Box 50165 Room 6305
Honolulu, HI 96850

B. For DOFAW:

Chairperson
1151 Punchbowl St.
Honolulu, HI 96813

ARTICLE VI – PRIOR APPROVAL

Not applicable.

ARTICLE VII – REPORTS AND/OR OTHER DELIVERABLES

Upon request and to the full extent permitted by applicable law, the agencies will share with each other final reports of incidents involving both agencies.

ARTICLE VIII – PROPERTY UTILIZATION

Unless otherwise agreed to in writing by the agencies, any property furnished by one agency to the other will remain the property of the furnishing agency. Any property furnished by

the NPS to other agencies during the performance of this Agreement will be used and disposed of as set forth in NPS Property Management Regulations.

ARTICLE IX – MODIFICATION AND TERMINATION

- A. This Agreement may be modified only by a written instrument executed by the agencies.
- B. Either agency may terminate this Agreement by providing the other agency with a sixty days written notice. In the event that one agency provides the other agency with notice of its intention to terminate, the agencies will meet promptly to discuss the reasons of the notice and to try to resolve their differences.

ARTICLE X – STANDARD CLAUSES

A. Civil Rights

During the performance of this Agreement, the participants agree to abide by the terms of U.S. Department of the Interior - Civil Rights Assurance Certification, non-discrimination, and will not discriminate against any person because of race, color, religion, sex, or national origin. The participants will take affirmative action to ensure that applicants are employed without regard to their race, color, sexual orientation, national origin, disabilities, religion, age, or sex.

B. Public Information Release

Agencies will obtain prior Government approval from the Pacific Area Director for any public information release that refers to the Department of the Interior, any bureau, park unit, or employee (by name or title), or to this Agreement. The specific text, layout, photographs, etc. of the proposed release must be submitted with the request for approval.

ARTICLE XI – SIGNATURES

IN WITNESS HEREOF, the agencies hereto have executed this Agreement on the date(s) set forth below.

Approved by the Board of Land and Natural Resources at its meeting held on
_____.

NATIONAL PARK SERVICE:

BY _____
Director, Pacific Area

Date _____

STATE OF HAWAII:

BY _____
Chairperson
Board of Land and Natural Resources

Date _____

APPROVED AS TO FORM:

Deputy Attorney General
State of Hawaii

Date: _____

**MUTUAL AID FIREFIGHTING AGREEMENT
BETWEEN
UNITED STATES ARMY GARRISON, HAWAII
AND
HAWAII DEPARTMENT OF LAND AND NATURAL RESOURCES,
DIVISION OF FORESTRY AND WILDLIFE**

THIS AGREEMENT entered into this ____ day of _____, 20____, by and between the STATE OF HAWAII, DEPARTMENT OF LAND AND NATURAL RESOURCES, DIVISION OF FORESTRY AND WILDLIFE, hereafter referred to as the "Division of Forestry and Wildlife," and the UNITED STATES ARMY GARRISON, HAWAII, hereinafter referred to as the "Army."

WITNESSETH THAT:

WHEREAS, PUBLIC LAW 46 – 84TH Congress approved 27 May 1955 c. 105 S 1, 69 stat. 66, 42 USC SS 1856 a, b. c, d, authorizes the execution of mutual aid agreements between agencies of the United States and other agencies and instrumentalities for mutual aid in the fire protection; and

WHEREAS, the Division of Forestry and Wildlife, pursuant to Chapter 185, Hawaii Revised Statutes, is responsible for taking measures for the prevention, control and extinguishment of wildland fires within forest reserves, public hunting areas, wildlife and plant sanctuaries, and natural area reserves and shall cooperate with established fire control agencies of the counties and the federal government in developing plans and programs and mutual aid agreements for assistance for the prevention, control and extinguishment of fires on forest, pasture, brush, and watershed lands not within the department's fire protection responsibilities described above; and

WHEREAS, the Army has Policy Memorandum 25th ID (L) & USARHAW- G3-3, April 4, 2000 which directs a Wildfire Management Program;

WHEREAS, the aforementioned Wildfire Management Program includes an Interagency Cooperation component; and

WHEREAS, the Army and Division of Forestry and Wildlife are partners in watershed management and natural resource mitigation measures; and

WHEREAS, the State of Hawaii leases lands to the Army for training purposes and allows Army environmental stewardship activities, e.g. Makua Implementation Plan, on State lands; and

WHEREAS, by pooling the resources of the Army and the Division of Forestry and Wildlife, the combined strength and efforts of these two agencies would afford the people of Hawaii more extensive and effective protection of their lives, property, and forest areas they so vitally depend on for their water supply,

NOW, THEREFORE, in consideration of the above and the mutual covenants hereinafter set forth, the Army and the Division of Forestry and Wildlife do hereby agree as follows:

- (1) That the word "agency" when used in the Agreement shall mean either the Army or the Division of Forestry and Wildlife;
- (2) That either agency may, when it deems it necessary, request the assistance of the other agency when dealing with problems of fire prevention, presuppression, detection, suppression and extinguishment operations which occur on the islands of Oahu and Hawaii; and upon receipt of such request, or upon its own initiative, the other agency will assist the requesting agency with whatever personnel, equipment, and other resources it may have available at the time; provided, however, in no instance shall the responding agency be under a duty to assist the requesting agency when the personnel, equipment, and other resources available to it are, or would thereby be rendered insufficient to meet the actual or realistically potential needs of the community or area served by the agency;
- (3) That neither agency will make any direct charges to the other for fire suppression expenses incurred when such assistance is rendered, except as provided for in item (4);
- (4) That each agency shall remain responsible for all losses, damages or injuries to its own personnel and equipment which are incurred while engaged in any mutual undertakings; provided, however, that either agency may bring action against the other, as provided for by law, for the recovery of any damages, losses or injuries suffered by its personnel or equipment due to the tortuous misconduct of the other, including, but not limited to, claims for reimbursement for damages to, and for expenses incurred in fighting a fire upon or threatening the agency's land and its resources when the fire originated upon the other agency's land;
- (5) That each agency shall be separately liable to all third parties who may have a legal or equitable claim against the agency arising out of its tortuous misconduct while engaged in the performance of its duties; this provision does not waive any right and/or defenses a party may have against the other party for tortuous conduct;

- (6) That administrative personnel of both agencies shall meet to formulate a plan of cooperation dealing with the procedures to implement the purposes of this Agreement;
- (7) That each agency will retain its primary responsibility for the control of fire prevention and firefighting matters in its respective installations and properties;
- (8) That each agency agrees that, in order to conform to the requirements of the UNITED STATES DEPARTMENT OF DEFENSE relative to release of public information, all requests for information relative to fires at military installations must be referred to the cognizant COMMANDING OFFICER of the military installation concerned, and that employees, agents or officers of the agencies shall refrain from releasing such information;
- (9) That each agency agrees to permit personnel of the other to attend firefighting training classes and/or use its training facilities on a space-available basis and without cost to the agency; and
- (10) That each agency agrees to permit upon reasonable notice wildland fire management personnel of the other to visit one another's installations and properties for the purpose of familiarization with potential wildland fire locations, wildland fuel hazardous area, water supplies, fire protection structures, fire danger rating systems and general information necessary to promote the efficient assistance in firefighting and all-risk control operations. On military installations, all visits will be escorted by the cognizant Wildland Fire Program Manager or his official assistant. On State lands, all visits will be escorted by a designated agency representative from the Division.
- (11) That each agency agrees to provide means for telephone and radio communications to ensure interoperability in the interest of firefighter and public safety and economy of wildland firefighting resources.

IT IS UNDERSTOOD that nothing contained herein shall diminish or abridge those rights possessed by the Division of Forestry and Wildlife in enforcing the provisions contained in General Lease Nos. S-3849 (U.S. Lease, Contract No. OA-94-626-ENG-80) dated August 17, 1964 made by the State of Hawaii as lessor and United States of America as lessee, covering certain public lands situated at Kaohe, Hamakua and Puuanahulu, North Kona, Island of Hawaii, Hawaii; and S-3846 (U.S. Lease, Contract No. DA-94-626-ENG-78) dated August 17, 1964 covering certain public lands situated at Ewa Forest Reserve (Poamoho), Oahu, Hawaii; No. S-3850 (U.S. Lease, Contract No. DA-94-626-ENG-77) dated August 17, 1964 covering certain public lands situated at Pupukea-Paumalu Forest Reserve, Oahu, Hawaii; copies of the respective general

leases are on file with the Department of Land and Natural Resources. In the event of a conflict between the general leases and this Agreement, the general leases shall control.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be effective from the date of execution and will continue in force unless terminated by either party by thirty (30) days' written notice to the other; provided, however, that all of the provisions herein are complied with.

STATE OF HAWAII

By _____

Chairperson
Board of Land and Natural Resources

UNITED STATES ARMY GARRISON, HAWAII

By _____

Its Commander

APPROVED AS TO FORM:

Deputy Attorney General
State of Hawaii

Date